

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION**

LIBERTY FRUIT COMPANY, INC., et al.,)	
)	
)	
Plaintiffs,)	
vs.)	Case No. 05-6006-CV-SJ-FJG
)	
NU-WAY PRODUCE COMPANY,)	
INC., et al.,)	
Defendants.)	

ORDER

Pending in this matter is plaintiffs' motion for entry of default against defendant Kevin V. Schwede (Doc. No. 24).

Defendant Schwede was served on July 14, 2005 (Doc. No. 23), and to-date has neither filed an answer nor filed a motion for extension of time to do so. The Court issued an Order to Show Cause to defendant Schwede on September 13, 2005 (Doc. No. 27), ordering him to show cause in writing on or before September 30, 2005, why default judgment should not be entered against him. Thereafter, on September 26, 2005, defendant Schwede filed a pro se response to the Order to Show Cause, indicating that he filed for Chapter 13 Bankruptcy, Case No. 04-23991, on September 17, 2004, and that he "apologize[s] for the lack of communication concerning this matter, but hopefully this answer [sic] questions, and concerns the court has." See Doc. No. 29.

Defendant Schwede's bankruptcy, however, is not operating as a stay as to the present case. On May 23, 2005, plaintiffs filed a Notice of Lifting Stay Against Kevin Vernon Schwede, by Order of Judge Robert D. Berger, entered in the U.S. Bankruptcy Court for the District of Kansas in the case styled In Re: Kevin Vernon Schwede (Case No.

04-23991-13-rdb) on March 28, 2004 (see Doc. No. 21). Therefore, defendant Schwede's bankruptcy is no excuse for his failure to answer plaintiffs' complaint. Plaintiffs' motion (Doc. No. 24) is **GRANTED**, and default judgment entered.

In order to determine damages and expedite closure of this case, plaintiffs shall provide to the Court on or before **November 4, 2005**, a brief regarding the type and amount of damages they seek. Defendant shall file his response to plaintiffs' briefing regarding damages on or before **November 18, 2005**.

IT IS FURTHER ORDERED that the Clerk of the Court send a copy of this Order by regular and certified mail to defendant at his last known address:

Kevin V. Schwede
9608 W. 124rd Street
Overland Park, KS 66213

IT IS SO ORDERED.

/s/Fernando J. Gaitan, Jr.
Fernando J. Gaitan, Jr.
United States District Judge

Dated: October 19, 2005
Kansas City, Missouri